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STYLE AND SUBSTANCE IN LAWYERS

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The Scales and Johnson Article reminds law teachers of at least two things: that current conventions in legal education may be ineffective, even counterproductive, in our attempts to mold good lawyers and that all of us have an obligation to our students and ourselves occasionally to re-examine our fundamental assumptions about law and law teaching. Since I began law school, even through several years of practice and teaching, one question has endured: whether it is the mission of law teachers to effect fundamental changes in the substance—particularly the moral beliefs—of our students, or whether we are only to supply them what we may conceive of as a neutral body of knowledge and perhaps sharpen up their “form” or “style” in handling that knowledge. I suspect that most law teachers subscribe to the substantial effect theory, believing themselves possessed of some quantity of moral and factual “truth” and a desire to pass it on. Even so, my experience is that students do not understand that this may be a pedagogical goal. They are often seduced into thinking the goals are purely formal and stylistic, that “thinking like a lawyer” is only a matter of technique. Many fail, therefore, even to perceive, much less resist, substantive change. Substantive change either sneaks in their moral and intellectual back door or walks boldly through the front in the guise of merely formal improvement. The result is that our graduates recognize neither how law school has changed them nor what being, as opposed to acting as, a good lawyer means. Permit me a couple of anecdotes.

Some years ago, when I was thinking about what I should be when I grew up, and being a lawyer was one of the possibilities, I talked with my friend Steve, who had just graduated from a prestigious law school. Our conversation rambled broadly, but nonetheless managed a thorough review of Steve’s courses, his professors, his extracurricular activities and, of course, his fellow students. Throughout all, one fact was clear: Steve had hated law school. The contempt he did not heap upon his school and professors he reserved for his classmates. One of his especially acerbic comments has stayed with me through the years. “On my first day of law school, all new students gathered in a large auditorium for orientation. I looked around the room and one thought struck me: ‘Half of these

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people are merely actors looking for a new stage.' Three years later we gathered in the same auditorium, on the occasion of graduation. Once again I surveyed my classmates. This time I thought to myself, 'We have all become actors and God help our audiences.'"

My initial reaction to Steve's comments was that I must take care to choose a different school. But Steve insisted that this is how it would be, indeed how it must be, at any law school—"a protracted exercise in psychological abuse, the principal effects of which are to instill venality and cynicism, to apotheosize sophistry and to camouflage it all with duplicitous jargon, a polished delivery and well-tailored suits." He believed that those who enter law school with sufficiently base motives are little changed, only readied for their later public performances. The more altruistic are first seduced, then changed, by the process. No radical, Steve had learned well all the lessons but one. He had not learned how to be comfortable with his new costume and role. He could not reconcile his new professional image and skills—particularly the new way he was taught to interpret and relate to the people and events—with the ultimate goal of fostering justice; he wondered how it could be that persons so detached and "objective," often so morally vacuous, could be expected to assist in producing justice rather than, at best, merely entertainment. Many of his peers, on the other hand, seemed untroubled. They saw no paradox. In fact, they seemed to have been reborn to their roles, steeped in a catechism of "economic analysis," "zealous advocacy" and "thinking like a lawyer." They had not only learned the new language of law, they had learned a new language of morality. They had come to believe that justice was only a process, that it required great form but no particular substance.

Now I knew my friend to be of sound, even keen, mind. More important, I knew that we had once—and probably still—shared important values and world views. After all, we had graduated together from the same small, liberal arts college, and taken the same major subject, and had spent many months together doing research in Central America. Although Steve tended to be more politically conservative, I thought that if anyone's law school experience should predict mine, it would be Steve's. I could not have been more wrong.

I revelled in law school. With few exceptions, I found my professors and courses challenging and my clinical and extracurricular activities stimulating—intellectually and emotionally. Perhaps most important, I found my classmates bright, benevolent, even idealistic and passionate. I became completely absorbed by what I understood to be a heartfelt search for truth and justice, not simply a cynical exercise in role playing. In what seemed to be weeks, not years, I was through with degree in hand. Law school had not changed me, I thought, except perhaps to hone

my analytical and writing skills and to add a few wrinkles to my cerebral cortex. I was sure that, in essence, I was the same person that had entered law school. Therefore, either Steve had been wrong or my teachers had done a masterful job of brainwashing.

It took me a while to answer the implicit question. New job, new state, new friends—all precluded my gaining any perspective for a few years. But life in a large firm has a way of encouraging personal reassessment, and bit by bit I began to piece things together. Then one day I noticed that my wife had kept two pictures of me in her billfold. I asked her why.

"These are the before and after," she replied.

"Before and after what?" I asked, noting a striking dissimilarity between the two photographs.

"Your two years of law school."

"Superficial changes," I explained. "I cleaned up my act a little."

"You sure did. And now your act includes expensive suits, silk ties, leather briefcase, sportscar, fancy office, and even a clever way to organize your conversations in outline form . . . (a) this, (b) that etc."

"Formal improvements and substitutions, not substantive changes," I reiterated, "mostly part of the professional role. On the inside I'm the same guy."

"This is California," she rejoined. "You are what you drive. Besides, doesn't it tell you something that almost all your friends are lawyers. And when you get together, you all begin speaking in legal tongues—'torts,' 'substantive due process,' 'Noerr-Pennington doctrine,' 'hearsay.' Law school seems to have prepared all of you to play only one part, to say the same lines. It narrowed you; it didn't broaden you. It took differentiated human shapes and feelings and extruded them. You all look and sound alike."

"Well," I defended, "first, it is not true that most of our friends are lawyers. Second, even if it is true, it is because most of our generation are lawyers. Third, shop talk is an unfortunate and admittedly boring side effect of any profession. Physicists do it, plumbers do it, and even clinical psychologists do it, as we know from getting together with your friends. And I'll admit that my interests have narrowed a bit, but that is largely due to the demands of work."

"You know, we used to get together with our friends. But my point is that the fellow who went off to law school didn't come back. This other fellow did. The new fellow may be a hot-shot lawyer, but in some ways he is also Orwellian, as most lawyers seem to be. You talk as if there is, on the one hand, a "professional you" trained to serve efficiently the greater good of justice and, on the other, a "real you." You imagine that you can take off your new professional self—with special language,

special codes and special ways of analyzing human events—as you might your gray suit. Well, your suit may come off at times, but your language doesn't, and it is what tips people off. Your language—not only what you say but how you say it—communicates to people what you think about them and how well you understand their problems. You often maintain a distance that renders you less like humans than prettified zombies. And those of you who don't, come across with the false empathy of used car salesmen.”

I knew what she was saying. We had had this conversation before. Even beyond the special argot of Black's, law school trains students to master style and language—spoken, physical and intellectual—as weapons. Students learn to do battle with them, so that every conversation and every minor difference of opinion becomes a litigation. They must now win their conversations. They learn to talk but not listen, learn to persuade but not understand, learn to revere the objective and mistrust the subjective. And in a very real sense, their new language redefines them to their communities. They become part of the institution of law; they sound like it, and they look like it. They are no longer of the community but apart from it. They separate themselves from those they are to serve. But their language and costumes are not at all those of servants. Like the firms, bureaucracies and systems they often represent, they have become the masters and their constituents the servants. At every turn they seem to shrink from making themselves understood to such “ordinary” persons. And, unlike scientists, for example, who resort to special languages and behavior to learn from each other and to increase knowledge, lawyers use their special languages all too often to mask and to deceive, to confound truth and not to seek it.

Of course, this is true only of the prosaic lawyer. Truly great lawyers understand these problems and avoid them. They can differentiate between style and substance. They realize that lawyers best serve by clarifying, not obfuscating, by bringing people together, not separating them. They understand that those are the proper goals for the language and costumes of law. The great lawyers, like all great people, speak to all, not just a few. They deal not with a world divided into plaintiffs and defendants, lawyers and laymen, victors and vanquished, but a world composed of people who must help each other solve problems. And the great lawyers' language, their style, is firmly grounded in a conscience and substance not greatly influenced by, and certainly not replaced by, a legal education.

Unfortunately, my law school, like most law schools, did not adequately impress upon me many models of great lawyers. Nor did Steve's school upon him. Into this vacuum swept less desirable models who suggested, intentionally or not, that lawyers are actors who play parts that others write for them; that they need only to put on the correct

costume and deliver their lines with feeling; that the truly versatile actor can play any part equally well. Will singing in law school prevent this? I do not know. Perhaps singing together might help law students to remember that they must write their own lines. Perhaps it will only help them only to memorize lines written by others. It may improve their skill as servants of the community; or it may merely reinforce their lawyers' comraderie, as in an elite actors guild. Whatever the case, more than singing is needed to preserve law students and lawyers as people.